UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HÉCTOR VÁZQUEZ-DÍAZ, et al., Plaintiffs, v. RENÉ HERNÁNDEZ-ARENCIBIA, Defendant.	Civil No. 07-2097 (JAF)

OPINION AND ORDER

Plaintiffs, Héctor Vázquez-Díaz ("Vázquez"), Tania Maldonado de Vázquez, and their conjugal partnership, brought this action against Defendant, René Hernández-Arencibia, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and Puerto Rico law, and seeking $50 Million in damages. (Docket No. 1.) On May 20, 2009, we granted Defendant's motion for summary judgment (Docket No. 57), holding that Plaintiffs could not establish a RICO violation, and declining to exercise supplemental jurisdiction over Plaintiffs' Puerto Rico claims. (Docket No. 88.) Plaintiffs now move for reconsideration under Federal Rule of Civil Procedure 59(e) (Docket No. 90), and Defendant opposes (Docket No. 92).

Pursuant to Rule 59(e), we entertain motions for reconsideration to (1) correct manifest errors of law or fact, (2) consider newly-discovered evidence, (3) incorporate an intervening change in the law, or (4) otherwise prevent manifest injustice. Fed. R. Civ.

P. 59(e); see Marie v. Allied Home Mortgage Corp., 402 F.3d 1, 7 n.2 (1st Cir. 2005) (citing 11 Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed. 1995)); see also Dr. Jose S. Belaval, Inc. v. Pérez-Perdomo, 465 F.3d 33, 37 n.4 (1st Cir. 2006); Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997); FDIC v. World Univ., Inc., 978 F.2d 10, 16 (1st Cir. 1992). If our original decision was correct, we need not reconsider, even if the opinion contained factual or legal errors. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921, 930 (1st Cir. 1995) (citing Helvering v. Gowran, 302 U.S. 238, 245 (1937)).

Plaintiffs argue that we erred because (1) Defendant failed to meet his burden of showing that he was entitled to summary judgment, because he relied on conclusory statements of the law; (2) Plaintiffs can establish that Defendant participated in a RICO enterprise; and (3) as the litigation had reached an advanced stage, we should not have dismissed Plaintiffs' claims under Puerto Rico law. (Docket No. 90.) We address these arguments in turn.

First, Plaintiffs contend that Defendant's motion for summary judgment (Docket No. 57) lacked significant legal analysis, rendering it unnecessary for Plaintiffs to offer evidence to support their case. (Docket No. 90.) A nonmoving party, even one that has the burden of persuasion at trial, may have no obligation to present evidence supporting its case if the moving party fails to meet its burden of showing the absence of a genuine issue of material fact.

Carmona v. Toledo, 215 F.3d 124, 133 (1st Cir. 2000). Nevertheless, "if the summary judgment record satisfactorily demonstrates that the plaintiff's case is, and may be expected to remain, deficient in vital evidentiary support, this may suffice to show that the movant has met its initial burden" of demonstrating the absence of a genuine issue of material fact. Id. Furthermore, courts may grant summary judgment based on rationales not advanced by the parties. See New Fed Mortg. Corp. v. Nat'l Union Fire Ins. Co., 543 F.3d 7, 11 (1st Cir. 2008). Here, we agree that Defendant's motion was conclusory and lacking in analysis or reference to the factual record. (See Docket No. 57.) However, our decision rested on a legal conclusion about the sufficiency of Plaintiffs' allegations, not on an evidentiary gap in Plaintiffs' case that they could be expected to remedy prior to trial. (Docket No. 88); cf. Carmona, 215 F.3d at 133-34. We, therefore, find that it was not premature to grant summary judgment in favor of Defendant, despite the deficiency of his motion.

Next, Plaintiffs argue that we erred in our conclusion that Plaintiffs failed to establish a RICO case. (Docket No. 90.) We previously reasoned that Plaintiffs could not show that Defendant was connected with a group of people who associated together for the purpose of committing crimes, as required by RICO. (Docket No. 88.) Plaintiffs argue that they were not required to show this, and that legitimate business operations can constitute enterprises under RICO.

(Docket No. 90 (citing Aetna Cas. Sur. Co. v. P & B Autobody, 43 F.3d 1546, 1557 (1st Cir. 1994).

RICO renders it unlawful for any person associated with an enterprise affecting interstate commerce to engage in "a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). The prototypical RICO case involves either organized crime syndicates or situations in which a defendant takes over a seemingly-legitimate business operation, thereby gaining additional power to do harm. See Gamboa v. Velez, 457 F.3d 703, 710 (7th Cir. 2006); George Lussier Enters., Inc. v Subaru of New Eng., Inc., 393 F.3d 36, 52 n.19 (1st Cir. 2004) (citing Fitzgerald v. Chrysler Corp., 116 F.3d 225, 227-28 (7th Cir. 1997)). While RICO extends beyond these situations, it "has not federalized every state common-law cause of action available to remedy business deals gone sour." Gamboa, 457 F.3d at 710 (quoting Midw. Grinding Co., Inc. v. Spitz, 976 F.2d 1016, 1025 (7th Cir. 1992)). To establish a claim under § 1962(c), a plaintiff must show "(1) conduct (2) of an enterprise, (3) through a pattern of (4) racketeering activity." Soto-Negrón v. Taber Partners I, 339 F.3d 35, 38 (1st Cir. 2003) (citing N. Bridge Assocs., Inc. v. Boldt, 274 F.3d 38, 42 (1st Cir. 2001)).

A plaintiff may establish the existence of a RICO enterprise by showing either "the existence of a legal entity, such as a corporation, or that a group of individuals were associated-in-fact." Aetna, 43 F.3d at 1557. It is possible to establish a RICO violation

even when the racketeering activities are detrimental to a legitimate business operation. Id. at 1558. Here, Plaintiffs correctly note that the business ventures at issue could constitute RICO enterprises, even though they were not created for a criminal purpose, and even though they were themselves undermined by Defendant's alleged racketeering activities. See id. at 1557-58.

To demonstrate the existence of a "pattern" of racketeering activity, a plaintiff must show either "past conduct that by its nature projects into the future with a threat of repetition" or "a closed period of repeated conduct." H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 241 (1989) (citing Barticheck v. Fidelity Union Bank/First Nat'l State, 832 F.2d 36, 39 (3d Cir. 1987)). "Open continuity" exists where a plaintiff can show a threat of future criminal conduct; the plaintiff cannot make such a showing when the defendant sought to accomplish a discrete goal, directed at a finite group of victims. H.J. Inc., 492 U.S. at 241; Boone v. Carlsbad Bancorporation, Inc., 972 F.2d 1545, 1556 (10th Cir. 1992).

To determine whether a plaintiff has met the requirement for "closed continuity," we consider, among other factors, the time frame of the racketeering activity, the number of victims, the number of separate schemes, and the complexity of the scheme. Efron v. Embassy Suites (P.R.), Inc., 223 F.3d 12, 17-18 (1st Cir. 2000). In Efron, the First Circuit found that a partner in a hotel project could not establish a RICO violation by alleging that other partners

deliberately caused the project to lose money. 223 F.3d at 14, 21. The Efron court reasoned that the partners' acts had occurred over a limited time period (twenty-one months), had targeted only three victims, and involved only one relatively simple scheme. 223 F.3d at 18-19.

Plaintiffs have not alleged that Defendant's behavior represents a continuing threat to other victims; accordingly, they cannot establish open continuity. Cf. Boone, 972 F.2d at 1556. Turning to the issue of closed continuity, Plaintiffs allege predicate acts over a time period of at most from August 2004 (when Defendant and Vázquez formed the Mansiones Enterprise) through November 2007 (when Plaintiffs filed the present complaint). (Docket No. 1.) Plaintiffs' own version of the facts reveals that Defendant acted without the knowledge of any of the other partners in the enterprises, and Plaintiffs have neither alleged nor established that Defendant had any collaborators who knew of the nefarious nature of his scheme. (See id.) Furthermore, Plaintiffs only allege injury to themselves. (Id.) We find that, as in Efron, the allegations do not amount to "the kind of broad or ongoing criminal behavior at which the RICO statute was aimed." See 223 F.3d at 18.

Accordingly, for slightly different reasoning from our previous Opinion and Order (Docket No. 88), we affirm our conclusion that Plaintiffs cannot establish a RICO violation. Finally, because we affirm our dismissal of all federal claims, we need not reconsider

our decision against exercising supplemental jurisdiction over Plaintiffs' Puerto Rico claims. See 28 U.S.C. § 1367(c)(3); Rivera v. Murphy, 979 F.2d 259, 264 (1st Cir. 1992) (quoting Cullen v. Mattaliano, 690 F. Supp. 93, 99 (D. Mass. 1988)).

In accordance with the foregoing, we hereby **DENY** Defendant's motion for reconsideration (Docket No. 90).

IT IS SO ORDERED.

San Juan, Puerto Rico, this 9th day of July, 2009.

s/José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U.S. District Judge